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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,761	02/06/2001	Gerald B. Murphy	P04722US0	4274
22885	7590	11/17/2005	EXAMINER	
MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721			NAJARIAN, LENA	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/777,761

Applicant(s)

MURPHY, GERALD B.

Examiner

Lena Najarian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-28 is/are rejected.
- 7) ☒ Claim(s) 17 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Notice to Applicant***

1. This communication is in response to the amendment filed 9/2/05. Claims 15-28 are pending. Claims 15-20, 23-25, and 28 have been amended.

***Requirement for Information Under 37 C.F.R. 1.105***

2. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.
3. The information is required to identify products and/or services embodying the disclosed subject matter of a method for strategic commodity management through mass customization. The Examiner, upon reviewing Applicant's declaration under 37 CFR 1.132, discovered reference to Michigan State and Brock Associates, which appear to have implemented systems related to Applicant's invention.
4. In response to this requirement please provide any known publications, brochures, manuals and press releases that describe Michigan State's income model and Brock Associates' commodity advisory firm.
5. The fee and certification requirements of 37 C.F.R. 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 C.F.R. 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first

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communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 C.F.R. 1.105 are subject to the fee and certification requirements of 37 C.F.R. 1.97.

4. In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure.

5. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained will be accepted as a complete response to the requirement for that item.

6. This Office action has an attached requirement for information under 37 CFR 1.105. A complete reply to this Office action must include a complete reply to the attached requirement for information. The time period for reply to the attached requirement coincides with the time period for reply to this Office action.

### ***Drawings***

7. The objection to the drawings is hereby withdrawn due to the amendment filed 9/2/05.

***Claim Objections***

8. Claims 17 and 18 are objected to because of the following informalities: before the "calculating a level of crop insurance" step, "and" is missing and a period is missing at the end of claim 17; remove the "and" before the "updating the strategic marketing plan" step and instead place it before the "implementing the updated strategic marketing plan" step of claim 18. Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

9. The rejection of claims 15-24 under 35 U.S.C. 101 is hereby withdrawn due to the amendment filed 9/2/05.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 15-16 and 18-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Schneider (US 2002/0103688 A1).

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(A) Claim 15 has been amended to now recite a “computer-assisted” method and “electronically” providing marketing information “wherein the updated marketing information comprises probabilities of price targets.” The Examiner respectfully submits that Schneider discloses at para. 1 and para. 58, an electronic-based system and discloses the use of a computer. Also, at para. 22, Schneider teaches the probabilities of receiving the target prices. As such, it is readily apparent that Schneider teaches wherein the updated marketing information comprises probabilities of price targets and that the Schneider system is computer-assisted.

The remainder of claim 15 is rejected for the same reasons given in the previous Office Action, and incorporated herein.

(B) The amendment to claim 16 appears to have been made to merely correct minor typographical or grammatical errors (i.e., removing dashes, repetitive language, and re-arranging the order of claim elements so that the language of the claim is smoother or more consistent) and/or to make minor changes, but otherwise does not affect the scope and breadth of the claim as originally presented and/or in the manner in which the claim was interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claimed features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

(C) Claim 18 has been amended to now recite underwriting financing “of a producer of the agricultural crops” with a strategic marketing plan “which provides the assured income based on a minimum level of crop yield and a predetermined

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minimum crop price achieved by pre-selling;" (see para. 17, para. 6, and para. 22 of Schneider)

underwriting the strategic marketing plan with crop insurance "to assure the minimum level of crop to be sold; (see para. 22 of Schneider)

updating the strategic marketing plan with electronically supplied updated marketing information; (see para. 26 of Schneider)

implementing the updated strategic marketing plan to capture additional income beyond the assured income." (see para. 13, para. 9, para. 59, and para. 94 of Schneider).

The remainder of claim 18 is rejected for the same reasons given in the previous Office Action, and incorporated herein.

(D) Claim 19 has been amended to now recite "wherein the financing is provided to a producer conditioned on use of the strategic marketing plan." The Examiner respectfully submits that at para. 2 ("economic factors, such as, ... conditions for credit, often influence or dictate crop selection and acreage allocation") and para. 17 ("develop a marketing plan for the farmer based on the selected crop-acreage combination....", Schneider discloses these features.

### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 17, 20, and 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider (US 2002/0103688 A1) in view of Ericksen (US 2002/0123960 A1).

(A) Claim 17 has been amended to now recite a "computer-assisted" method "for an agricultural enterprise" comprising:

"determining a financial assessment score based on the financial assessment;"

calculating a marketing financial risk score "wherein the marketing financial risk score is defined as a numeric value describing financial risks related to markets and income of the agricultural enterprise;"

receiving a price risk from a marketing service, "wherein the price risk is a price risk of a commodity market and is determined based on a computer analysis;"

calculating a level of crop insurance "and determining pre-sell quantities using the financial assessment score, the marketing financial risk score and the price risk of the commodity market."

Schnedier discloses a computer-assisted method for use by an agricultural enterprise (see para. 1 and para. 58 of Schneider), comprising:

determining a financial assessment (see para. 9 of Schneider);



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calculating marketing financial risk wherein the marketing financial risk is related to markets and income of the agricultural enterprise (see para. 17 of Schneider);

receiving a price risk from a marketing service, wherein the price risk is a price risk of a commodity market and is determined based on a computer analysis (see para. 13, para. 22, and para. 150 of Schneider).

calculating a level of crop insurance and determining pre-sell quantities (see para. 6 and para. 17 of Schneider).

Schneider does not expressly disclose the use of scores. However, risk scores are well-known, as evidenced by Erickson.

Erickson discloses the use of risk scores (see para. 3 of Erickson).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Erickson within Schneider. The motivation for doing so would have been to calculate the risk of a customer based on data from loan applications and credit bureaus (para. 3 of Erickson).

The remainder of claim 17 is rejected for the same reasons given in the previous Office Action, and incorporated herein.

(B) Claim 20 has been amended to now recite a "numeric" weighted average.

Schneider does not expressly disclose a numeric weighted average.

Ericksen discloses a numeric weighted average (see para. 50 and Table 5 of Ericksen).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the feature of Ericksen within Schneider. The

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motivation for doing so would have been to calculate the risk of the customer (i.e., the farm business) by measuring the likelihood that the customer will default on a loan (see para. 50 of Ericksen).

(C) Claims 22, 26, and 27 have not been amended and are rejected for the same reasons given in the previous Office Action, and incorporated herein.

(D) Claim 24 has been amended to now recite selecting a crop "revenue" insurance level greater than the debt obligations "to provide a best level of crop insurance and thereby underwriting financing to the producer by the marketing plan and the best level of crop insurance" (see para. 17, para. 20, and para. 88 of Schneider).

The remainder of claim 24 is rejected for the same reasons given in the previous Office Action, and incorporated herein.

(E) The amendments to claims 23, 25, and 28 appear to have been made to merely correct minor typographical or grammatical errors (i.e., removing dashes, repetitive language, and re-arranging the order of claim elements so that the language of the claim is smoother or more consistent) and/or to make minor changes, but otherwise does not affect the scope and breadth of the claims as originally presented and/or in the manner in which the claims were interpreted by the Examiner when applying prior art within the previous Office Action.

As such, the recited claimed features are rejected for the same reasons given in the prior Office Action, and incorporated herein.

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14. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider (US 2002/0103688 A1) in view of Ericksen (US 2002/0123960 A1), and further in view of Friedman ("Dictionary of Business Terms").

(B) Claim 21 has not been amended is rejected for the same reasons given in the previous Office Action, and incorporated herein.

### ***Affidavits***

15. At page 20 of the amendment filed 9/2/05, Applicant has requested that the Examiner consider additional evidence of non-obviousness. In particular, Applicant relies on an affidavit filed under 37 CFR 1.132 and attached exhibits, as evidence of commercial success, praise by others, and unexpected results.

The declaration under 37 CFR 1.132 filed 9/2/05 is insufficient to overcome the rejection of claims 15-28 based upon the Schneider reference as set forth in the last Office action because:

(I) The declaration and attached exhibits fail to establish a clear nexus between the alleged commercial success and the invention as claimed. The evidence is not commensurate in scope with the scope of the claims. *In re Tiffin*, 448 F.2d 791, 171 USPQ 294 (1971). In particular, there is nothing that directly ties the statements of the affidavit nor the materials mentioned in the exhibits with the language specifically recited in the instant claims. For example, the letters from Carroll County Sate Bank and Westside State Bank refer to a program that combines commodity marketing strategies to Federal Crop

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Insurance programs, features not present in all of the pending claims. Further, the courts have held that affidavits or declarations showing commercial success to the invention "described and claimed" or other equivalent indefinite language have little or no evidentiary value. *In re Troutman*, 1960 C.D. 308, 126 USPQ 56, 47 CCPA 308.

(II) In order to establish commercial success, the evidence must establish that the alleged commercial success is directly derived from the invention claimed, in a marketplace where the consumer is free to choose on the basis of objective principles, and that such success is not the result of heavy promotion or advertising, shift in advertising, consumption by purchasers normally tied to Applicant or assignee, or other business events extraneous to the merits of the claimed invention. *In re Magneli et al.*, 176 USPQ 305 (CCPA 1973); *In re Noznick et al.*, 178 USPQ 43 (CCPA 1973). There is no statement provided regarding whether this program was used by purchasers normally tied to Applicant or assignee.

(III) As per the affidavit of Gerald B. Murphy, it is respectfully submitted that the affidavit of Gerald B. Murphy is insufficient to overcome the grounds of rejection given in the previous Office Action because it appears to be self-serving in that the affidavit merely provides statements made by the named inventor. As such, the Examiner is not sure how much weight can be attributed to such statements, as they are neither positively and definitely confirmed or corroborated by other third parties/objective affiant(s), for the reasons set forth above, and because no other forms of hard evidence (i.e., graphs, charts,

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sample survey forms, official survey results) have been provided to evidence the averred statements.

In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

### ***Response to Arguments***

16. Applicant's arguments with respect to claims 17 and 20 have been considered but are moot in view of the new ground(s) of rejection.

17. Applicant's arguments filed 9/2/05 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 9/2/05.

(1) Applicant argues that Schneider is not legal prior art.

(2) Applicant argues at pages 11-12 that Schneider is directed to a production system, not a financial system as the present invention addresses.

(3) Applicant argues that Schneider merely discloses the existence of a marketing plan and not how to develop a marketing plan as in the present invention. The present invention updates the marketing plan which is critical to its proper implementation.

(4) Applicant argues that Schneider fails to disclose that there is any "tying" or other relationship present. All that is disclosed in Schneider is that farmers may have marketing plans and farmers have financial obligations.

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(5) Applicant argues that Schneider does not disclose wherein the updated marketing comprises probabilities of price targets and that Schneider does not disclose using such marketing data.

(6) Applicant argues that Schneider is silent as to any nexus between receiving of financing and use of an agricultural marketing plan.

(7) Applicant argues that Schneider mentions relying upon probabilities of receiving target prices, but makes clear that those probabilities are computed as functions of random variables and Schneider does not disclose how those probabilities are computed or where they come from. This is completely at odds with "receiving a price risk from a marketing service" as claimed.

(8) Applicant argues that Schneider does not disclose any relationship where financing of a producer is conditioned on the user of a strategic marketing plan.

(9) Applicant argues that the Z-factor disclosed by Friedman is specific to manufacturers and not agricultural. Therefore, the Z-score of Friedman would not make sense to use in evaluating an agricultural enterprise. Moreover, how does the existence of a word in a dictionary create a case of obviousness?

(A) As per the first argument, Schneider filed a provisional application on August 22, 2000, which is before Applicant's filing date of February 6, 2001. As such, under 35 U.S.C. 102(e), Schneider is legal prior art.

(B) As per the second argument, the Examiner respectfully submits that Schneider is directed to a management plan (see abstract) and discloses at para. 6, risk management strategies and financial instruments.

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(C) As per the third argument, the Examiner respectfully submits that Schneider teaches at para. 17, lines 28-40, developing a marketing plan.

(D) As per the fourth, sixth, and eighth arguments, the Examiner respectfully submits that at para. 17, lines 24-40, Schneider discloses that agricultural lenders use the system. As such, there is a relationship.

(E) As per the fifth argument, the Examiner respectfully submits that at para. 22, Schneider discloses probabilities of receiving target prices and at para. 26, discloses using marketing data.

(F) As per the seventh argument, the Examiner respectfully submits that Schneider discloses at para. 13 that data is provided from marketing advisors. Para. 22 discloses price risks. All that Applicant has claimed is "receiving a price risk from a marketing service." As such, the Examiner has addressed this limitation in the prior Office Action.

(G) As per the ninth argument, the Examiner pointed to a dictionary definition to show that Applicant did not invent the Z-score and that it is old and well-known. The Z-score equation disclosed in Friedman is identical to the Z-factor disclosed at page 22 of Applicant's specification. In addition, the Examiner provided a proper motivation for combining Friedman within Schneider.

### ***Conclusion***

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied prior art teaches an apparatus and methods for selecting farms to grow a crop of interest (US 2002/0059091

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A1); method and apparatus for determining loan prepayment scores (US 6,185,543 B1); financing of loans (US 2002/0065753 A1); risk management and risk transfer conduit system (US 2001/0027437 A1); crop integrity auditing and reporting system and method (US 2002/0082982 A1); electronic trading platform for agricultural commodities (US 2002/0069156 A1); a system and method for physicals commodity trading (US 2002/0120555 A1); a global trading system and method (US 2001/0049651 A1); farm management software and risk; AgRisk 1.0; optimal grain marketing; grain marketing plans for farmers; credit-score system; "Are your Farmers Confused About Marketing?"; questions and answers about agriculture loan officers and farmers' investments in new generation cooperatives; and farmer cooperatives 2000 conference.

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will




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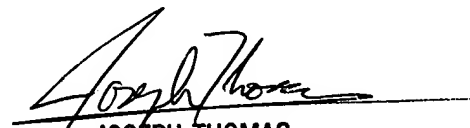
the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ln  
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